

REMARKS

Claims 1-13 and 15-21 are pending in the Application. Applicant notes with appreciation the allowance of claims 1-10 and 18-21, and the conditional allowance of claim 12. Applicant also wishes to thank the Examiner for kindly taking the time to discuss the Application.

Claim 12 has been rewritten in independent form, and should be allowed. Claims 11 and 13 have been amended.

Rejections under 35 U.S.C. § 102

Claims 11, 13 and 15-17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,019,792 to Cauthen ("Cauthen"). As the PTO provides in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim...." Therefore, the patent must disclose all of the elements of the respective claims to sustain the rejections. Accordingly, Applicant respectfully traverses those rejections on the following grounds.

Independent claim 11

Claim 11, as amended, recites in part: "wherein at least one of the prosthetic discs comprises hydrogel."

In contrast, Cauthen does not teach or suggest a disc comprising hydrogel. Accordingly, Cauthen fails to teach or suggest each element of claim 11 as required by MPEP § 2131, and claim 11 is allowable over the cited reference.

Independent claim 13

Claim 13, as amended, recites in part: "a plurality of resilient discs interposed between each of the housing halves, wherein each prosthesis has a threaded exterior surface" (emphasis added).

In contrast, Cuathen recites the following:

Another embodiment of the present invention is depicted by FIG. 5, which shows an implant 10, generally comprising first and second elements 20, 22, substantially as described above, and further comprising an intermediate articulation element, which in the depicted embodiment comprises a generally hemispherical bowl-shaped cap 90 interposed between the concave surface 46 of the first element 20 and the convex surface 48 of the second element 22. (col. 7, lines 31-39) (emphasis added)

Therefore, contrary to claim 13, which discloses a plurality of resilient discs, Cauthen recites one articulating element. Accordingly, Cauthen fails to teach or suggest each element of claim 13 as required by MPEP § 2131, and claim 13 is allowable over the cited reference.

Independent claim 16

Claim 16, as amended, recites in part: “A viscoelastic prosthetic disc for use in a human spinal implant, the disc having viscoelastic properties similar to the natural biological disc found in the human spine[.]” (emphasis added)

The Office Action failed to cite any reference that teaches or suggests the above limitations. Therefore, claim 16 should be allowed.

Dependent claims

Dependent claims 15 and 17 depend from and further limit respective claims 13 and 16, and should also be allowed.

Conclusion

As a result of the foregoing, it is respectfully asserted that all of the claims of the Application are in condition for allowance. Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Attorney Docket No. PC873.02 / 31132.67
Customer No. 27683

The Examiner is invited to contact the undersigned at the numbers provided below if further consideration is required. Also, Deposit Account No. 08-1394 may be used for any over or under payments.

Respectfully submitted,



David M. O'Dell
Registration No. 42,044

Date: August 31, 2004
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972/739-8635
Facsimile: 214/651-5940
Attorney Docket No.: 31132.67

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